

Non-Citizens in Postdoctoral Positions Summary of Procedures for Supervisors

Please note that detailed information on employment of noncitizens and instructions on completion of forms can be found on the Human Resources Division website. The document is "Non-citizen Employment in Nonpermanent Excepted Service Positions." Go to: <http://www.afm.ars.usda.gov/hrd/topicsaz.htm#n>

Please contact your servicing human resources specialist at the beginning of the employment process. A lead time of 4-6 months is necessary to employ a noncitizen.

The first preliminary step is to ensure that the noncitizen is from a country on the “approved” list (last page of this document). These countries have treaties with the United States or are nations specifically authorized by Congress. If the foreign national is not from a country on the list, they cannot be employed. (Please note that these country restrictions also apply to noncitizens who are permanent residents of the U.S.)

STEPS

1. Name trace through ARS Homeland Security (ARSHS)

Before employment paperwork can be submitted, foreign nationals from a country on the “approved list” must first be cleared using the name trace procedures established by ARSHS. The Noncitizen Data Sheet, ARS-230, should be completed and submitted as early as possible to the Area Office point of contact. (A courtesy copy of the e-mail to the LAO for information is suggested.) This name trace clearance process may take two months or more. Permanent residents (with “green” cards) must also complete the ARS-230, but we do not have to wait for the name trace to be completed for them to begin work.

The ARS-230 form can be found on the following website:
<http://www.arsnet.usda.gov/OHS/forms/index.htm>

2. Submit the employment paperwork through supervisory channels consisting of the following:

Copy of the e-mail from ARS Homeland Security reflecting that the name trace for the noncitizen has been satisfactorily completed or, for permanent residents, that the ARS-230 has been received;

SF-52, Request for Personnel Action;

AD-332, Position Description Cover Sheet and job description;

As of July 26, 2005

Resume, Curriculum vitae, or Optional Application for Federal Employment, OF-612, which includes country of citizenship; list of publications, presentations, honors/awards; one-page abstract of Ph.D. dissertation; description of how the special requirements for the position have been met including pertinent courses, accomplishments, etc.; and description of paid and unpaid work related to the position.

OF-306, Declaration for Federal Employment, signed by the applicant;

Original transcript - Proof of Ph.D. degree is required before employment may begin. (Note: your servicing specialist can provide a tentative offer of employment letter subject to the award of the degree and/or obtaining the appropriate visa that allows employment in the U.S.).

Also, please note that graduates of foreign universities must include proof that their Ph.D. degree is equivalent to a degree granted by an accredited U.S. college or university. Information on foreign education credentialing services can be found at: <http://www.afm.ars.usda.gov/hrd/jobs/FOREIGN.HTM>

3. Obtain H-1B visa or TN visa from U.S. Citizenship and Immigration Services, Department of Homeland Security

Once the appointment papers have been reviewed and approved by your servicing human resources specialist, **typically** an H-1B/TN visa will be needed. These visas that permit employment are issued by the U.S. Citizenship and Immigration Services, Department of Homeland Security. The location administrative officer is usually responsible for preparing and submitting the paperwork for the H-1B petition. TN visas for Canadian citizens are typically easier to obtain at a border crossing.

Complete instructions for obtaining H-1B or TN visas are available on the ARS website: <http://www.afm.ars.usda.gov/hrd/topicsaz.htm#n> The document is "Non-citizen Employment in Nonpermanent Excepted Service Positions."

To summarize, there are preliminary steps before filing form I-129 for an H-1B visa. The prevailing wage rate for the locality must first be determined and a Foreign Labor Certification issued by the U.S. Department of Labor.

A total of \$1,685 in fees is typically required for an H-1B visa for a new employee. This total includes the optional charge of \$1000 for premium processing. The fees associated with the H-1B petition (separate checks needed for all fees) are the \$185 basic filing fee; a separate \$500 fee for Fraud Prevention and Detection, and a \$1000 fee (highly recommended) to expedite the H-1 B visa and obtain the work visa in 15 calendar days. Without paying the extra \$1000, it takes approximately 4 months to obtain the H-1B visa.

A TN for a Canadian national is \$50.

4. Travel Visa for Candidates Residing Outside of the U.S.

When the selectee is outside the U.S., the noncitizen will also need to apply in person for a travel visa issued by the local U.S. State Department consul/embassy, in his/her country to enter the U.S. Additional information, forms, and appointment procedures are available at the following website:

http://travel.state.gov/travel/tips/embassies/embassies_1214.html

Please note that there may be a wait of 4-6 weeks before a consulate interview can be scheduled. Also, the noncitizen may be required to present the I-797, Notice of Action for their H-1B petition, issued by U.S. Citizenship and Immigration Services, at their interview.

This “travel” visa issued by Department of State must be kept current if the noncitizen leaves the U.S. and wants to re-enter. If the travel visa has expired, admission back into the U.S. will likely be denied even if the H-1B petition for work authorization issued by U.S. Citizenship and Immigration Services is still valid.

Country List/ Citizenship Information

Positions in the excepted service including ARS postdoctoral research associate positions may be filled either by (1) a citizen or national of the United States; (2) a citizen of a country the U.S. Congress has specifically exempted from the restricting legislation in the annual Treasury, Postal Service and General Government Appropriations Act; or (3) a national of a country currently allied with the United States in the current defense effort. Detailed information on Federal employment of noncitizens is available at: http://www.opm.gov/employ/html/non_cit.htm

The U.S. Congress has specifically exempted the following from the appropriations act restrictions:

- Persons who owe permanent allegiance to the United States (for example, natives of American Samoa and Swains Island);
- Aliens from Cuba, Poland, South Vietnam, or countries of the former Soviet Union (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan) lawfully admitted to the U.S. for permanent residence (have a "green card");
- South Vietnamese, Cambodian, and Laotian refugees paroled into the U.S. after 1/1/75;
- Nationals of the People's Republic of China (PRC) **who qualify under the Chinese Student Protection Act of 1992.** Note: These individuals were in the U.S. on/after June 5, 1989 through April 11, 1990 and not physically present in the PRC for more than 90 days between April 11, 1990 and October 9, 1992. This is reflected by **Code EC6** as the first three characters on the reverse of their Permanent Resident Card);
- Citizens of Ireland, Israel, or the Republic of the Philippines

Also exempt from the appropriations act ban are nationals of countries currently allied with the United States in a defense effort, (as determined by the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State, 202 647-1345). **Listing of countries as of July 2005.**

Argentina	Cuba	Haiti	Netherlands	Slovak Republic
Australia	Czech Rep.	Honduras	New Zealand	Slovenia
Bahamas	Denmark	Hungary	Nicaragua	Spain
Belgium	Dominican Rep.	Iceland	Norway	Thailand
Bolivia	Ecuador	Italy	Panama	Tobago
Brazil	El Salvador	Japan	Paraguay	Trinidad
Bulgaria	Estonia	Korea (Rep. of)	Peru	Turkey
Canada	France	Latvia	Philippines	United Kingdom*
Chile	Germany	Lithuania	Poland	Uruguay
Colombia	Greece	Luxembourg	Portugal	Venezuela
Costa Rica	Guatemala	Mexico	Romania	

Great Britain (England, Scotland, and Wales) and Northern Ireland. Additional Note: Immigration law bans employment of noncitizens unless lawfully admitted for permanent residence or are otherwise authorized to be employed.